

APPEAL NO. 030645
FILED APRIL 15, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 11, 2003. The hearing officer determined that (1) the respondent (claimant) was injured in the course and scope of his employment, on _____; (2) the appellant (carrier) is not relieved from liability for the injury under Section 406.032(2), because the claimant did not willfully engage in an act of horseplay; and (3) the claimant had disability beginning August 27, 2002, and continuing through October 27, 2002. The carrier appeals these determinations, asserting legal and factual error. The claimant urges affirmance.

DECISION

Affirmed.

COURSE AND SCOPE

The hearing officer did not err in determining that the claimant was injured in the course and scope of his employment on _____. The carrier contends that the claimant had deviated from the course and scope of his employment at the time of his injury, and that the injury was, therefore, not compensable. "Course and scope of employment" means, in pertinent part, "an activity of any kind or character that has to do with and originates in the work, business, trade, or profession of the employer." Section 401.011(12). A deviation occurs when an employee abandons and turns aside from the course and scope of his employment and is engaged in and pursuing personal work or objectives that do not further the employer's interest, at the time of the injury. See Lesco Transportation Company, Inc. v. Campbell, 500 S.W.2d 238 (Tex. Civ. App.-Texarkana 1973, no writ). An injury is not compensable if sustained during a deviation from the course and scope of employment, but an injury sustained after the deviation has ended is compensable. General Ins. Corp. v. Wickersham, 235 S.W.2d 215 (Tex. Civ. App.-Fort Worth 1950, writ ref'd n.r.e.). It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer could infer, as he did, that the claimant's deviation had ended just prior to sustaining the injury. In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

HORSEPLAY

The hearing officer did not err in determining that the carrier is not relieved from liability for the injury under Section 406.032(2), because the claimant did not willfully

engage in an act of horseplay. Whether the claimant willfully engaged in an act of horseplay was a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

DISABILITY

The hearing officer did not err in determining that the claimant had disability from August 27, 2002, through October 27, 2002. The carrier's challenge to the disability determination is premised upon the success of its argument that the claimant did not sustain a compensable injury. Given our affirmance of the above determinations, we likewise affirm the hearing officer's disability determination.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Edward Vilano
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge